STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LONNIE RAY GREENE,

Defendant-Appellant.

UNPUBLISHED
May 7, 2009

No. 278834
Jackson Circuit Court
LC No. 06-004125-FH

Before: Borrello, P.J., and Murphy and M.J. Kelly, JJ.

PER CURIAM.

Defendant was convicted by a jury of possession with intent to deliver more than 45 kilograms of marijuana, MCL 333.7401(2)(d)(*i*), for which the trial court sentenced defendant to serve 71 months to 15 years in prison. Defendant appeals as of right, and for the reasons set forth in this opinion, we affirm the defendant's conviction but remand for preparation of an amended judgment of sentence. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

I. Facts

A Michigan State Police officer testified that on the morning of May 1, 2006, he observed a large rental truck traveling over the speed limit on I-94, and then further observed that its license plate was made of cardboard. The officer affected a traffic stop and spoke to defendant, who was driving, and there was also a passenger. According to the officer, defendant, who had a Bible in his hand, immediately stated that he had been discussing scripture with his passenger, which the officer recognized as a tactic typical of persons hiding contraband. The officer continued that defendant's driver's license was from Texas, which he recognized as a "source state" for narcotics. Defendant stated that he was transporting furniture for a friend from Arizona to Detroit, but could provide neither the putative destination address nor the phone number of the putative contact. The rental agreement listed two approved drivers, neither of whom was defendant or his passenger. The officer described defendant as showing great nervousness. A routine check revealed that defendant was wanted on a Texas warrant. The officer testified that he handcuffed defendant to a wall, that defendant stated that he was responsible for the contents of the truck, and that defendant provided permission to search the truck. However, defendant had no key to open the padlock securing the contents. Upon forcing the lock, and later deploying a drug-sniffing dog, the police discovered large quantities of marijuana.

On appeal, defendant argues that he was convicted without benefit of effective assistance of counsel, and that the prosecutor failed to present legally sufficient evidence to support his conviction.

II. Effective Assistance of Counsel

After trial and sentencing, defendant unsuccessfully moved the trial court for a new trial or evidentiary hearing predicated on his claim of ineffective assistance of counsel. This Court reviews a trial court's decision on either motion for an abuse of discretion. See *People v Lemmon*, 456 Mich 625, 648 n 27; 576 NW2d 129 (1998) (new trial); *People v Mischley*, 164 Mich App 478, 482; 417 NW2d 537 (1987) (evidentiary hearing). An abuse of discretion occurs when the trial court chooses an outcome falling outside a "principled range of outcomes." *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003).

The United States and Michigan Constitutions guarantee a criminal defendant the right to the assistance of counsel. US Const, Ams VI and XIV; Const 1963, art 1, § 20. The constitutional right to counsel is a right to the *effective* assistance of counsel. *United States v Cronic*, 466 US 648, 654; 104 S Ct 2039; 80 L Ed 2d 657 (1984); *People v Pubrat*, 451 Mich 589, 594; 548 NW2d 595 (1996). To establish ineffective assistance of counsel, a defendant must show that counsel's performance fell below an objective standard of reasonableness under prevailing professional norms. *People v Daniel*, 207 Mich App 47, 58; 523 NW2d 830 (1994). The defendant must further show that there is a reasonable probability that, but for counsel's error, the result of the proceedings would have been different, and that the attendant proceedings were fundamentally unfair or unreliable. *People v Poole*, 218 Mich App 702, 718; 555 NW2d 485 (1996).

Defendant argues that trial counsel was ineffective for his failure to seek suppression of both the marijuana discovered in the truck and defendant's admission that he was responsible for the truck's contents.

A. Defendant's Admission

Defendant argues that that trial counsel was ineffective for failing to seek suppression of that evidence as having been obtained in violation of defendant's rights against self-incrimination.

"Statements of an accused made during custodial interrogation are inadmissible unless the accused voluntarily, knowingly, and intelligently waives his Fifth Amendment rights." *People v Howard*, 226 Mich App 528, 538; 575 NW2d 16 (1997), citing *Miranda v Arizona*, 384 US 436, 444; 86 S Ct 1602; 16 L Ed 2d 694 (1966), and *People v Garwood*, 205 Mich App 553, 555-556; 517 NW2d 843 (1994).

However, Fifth Amendment rights against self-incrimination concerning confessions, which are defined as statements admitting to criminal culpability. According to the evidence, when defendant admitted responsibility for the contents of the truck, no contraband had been discovered by the police. As defendant offered that statement, then he confessed to no criminal activity, rather he simply admitted to having responsibility over the contents, which had yet to be discovered.

"An admission of fact is distinguished from a confession of guilt by the fact that an admission, in the absence of proof of facts in addition to those admitted by the defendant, does not show guilt." *People v Gist*, 190 Mich App 670, 671-672; 476 NW2d 485 (1991). "'If . . . the fact admitted does not of itself show guilt but needs proof of other facts, which are not admitted by the accused, in order to show guilt, it is not a confession, but an admission . . . .'" *People v Schumacher*, 276 Mich App 165, 181; 740 NW2d 534 (2007), quoting *People v Porter*, 269 Mich 284, 290; 257 NW 705 (1934). "[W]here the defendant's statements were admissions of fact, rather than a confession of guilt, no finding of voluntariness is necessary." *Gist*, *supra* at 671.

In this case, because further evidence was required before defendant's admission of responsibility for the contents of the truck implicated him in criminal conduct, that admission was admissible at trial even if offered before *Miranda* warnings were provided. Additionally, case law suggests that even if defense counsel were inclined to bring a motion to suppress the admission, defendant, as an unauthorized driver of the truck, does not have a legitimate expectation of privacy in that vehicle, and thus has no Fourth Amendment standing to disallow a search of it. See *United States v Riazco*, 91 F3d 752, 754-755 (CA 5, 1996); *United States v Wellons*, 32 F3d 117, 119 (CA 4, 1994). Hence, because there was no legal basis for suppression of defendant's admission, and defendant did not have standing to contest the search, we cannot find that defense counsel was ineffective for failing to object to the search.

III. Sufficiency of the Evidence

When reviewing the sufficiency of evidence in a criminal case, we must view the evidence of record in the light most favorable to the prosecution to determine whether a rational trier of fact could find that each element of the crime was proved beyond a reasonable doubt. *People v Herndon*, 246 Mich App 371, 415; 633 NW2d 376 (2001). Review is de novo. *Id.*

In this case, defendant asserts that "the evidence presented at trial was not sufficient to establish, beyond a reasonable doubt, that [defendant] had a sufficient possessory interest in the truck to be guilty of possessing the marijuana found inside the truck." This bald assertion is not sufficient to present this issue for this Court's consideration. A party's mere assertion that the party's rights were violated, unaccompanied by record citations, cogent argument, or supporting authority, is insufficient to present an issue for consideration by this Court. See *People v Jones (On Rehearing)*, 201 Mich App 449, 456-457; 506 NW2d 542 (1993); MCR 7.212(C)(7). "A party may not merely state a position and then leave it to this Court to discover and rationalize the basis for the claim." *People v Mackle*, 241 Mich App 583, 604 n 4; 617 NW2d 339 (2000). Defendant's cursory treatment of this issue forfeits searching appellate review.

The evidence reveals that when defendant was stopped, he was in possession of a vehicle loaded with marijuana, rented to persons other than him, under circumstances where he was conspicuously nervous, and unable to specify his destination or contact the supposed recipient of the truck's contents. Defendant's driver's license indicated a Texas residence, which is a known source of narcotics and defendant admitted responsibility for the contents of the truck. All of these factors provided a reasonable basis for the jury's guilty verdict. See *People v Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993) ("Circumstantial evidence and reasonable inferences drawn therefrom may be sufficient to prove the elements of a crime."). For these reasons, we reject this claim of error.

IV. Judgment of Sentence

Although not at issue in this appeal, we note an irregularity concerning the judgment of sentence. On May 9, 2007, the trial court imposed a sentence of 15 to 30 years in prison, at the time regarding defendant as a fourth habitual offender, MCL 769.12. However, the judgment of sentence did not indicate defendant's habitual offender status. An amended judgment of sentence was entered on May 31, 2007, retaining the sentence originally imposed but indicating habitual offender sentencing. When defendant protested that he had not received proper notice of habitual offender machinations, and plaintiff conceded the point, the trial court resentenced defendant without habitual offender enhancement to serve 71 to 180 months in prison. The attendant judgment sentence was entered on January 23, 2008. A judgment of sentence dated November 5, 2008, labeled as the second amended judgment of sentence, reverts to the sentence of 15 to 30 years in prison, with mention of habitual offender sentencing, while reflecting an adjustment of the number of days of jail credit as recommended by the DOC.

Because an admitted failure of notice disallowed plaintiff and the trial court to proceed against defendant as a habitual offender, we remand this case to the trial court for the ministerial task of preparing and transmitting to the DOC, a judgment of sentence that reiterates the sentence of 71 to 180 months in prison, along with the correct number of days of jail credit, with no suggestion of habitual offender status.

Defendant's conviction is affirmed, but we remand to the trial court to prepare an amended judgment of sentence in accordance with this opinion. We do not retain jurisdiction.

/s/ Stephen L. Borrello
/s/ William B. Murphy
/s/ Michael J. Kelly